

WISCONSIN SUPREME COURT CALENDAR

January 11, 2002

9:45 a.m.



00-2841-CR State v. Brian D. Robins

This is a case that bypassed the Wisconsin Court of Appeals (the petitioners asked the Wisconsin Supreme Court to take it directly from the circuit court, and the Supreme Court agreed). This case originated in Outagamie County Circuit Court, Judge Michael W. Gage presiding.

In this case, the Supreme Court will decide whether the state's child enticement statute is constitutional when applied to Internet chats where there is no actual child involved in the chat.

This case stems from the use of police agents who pose as children on-line to help nab pedophiles. The attorney general's Crimes Against Children Task Force has already arrested about 50 people in Wisconsin by having agents pose as children and arrange meetings with adults looking for illegal sex.

Here is the background: From Jan. 31 through Feb. 5, 2000, Justice Department Agent Thomas Fassbender had a series of Internet conversations in the Wisconsin M4M (men-for-men) chat room. Using the screen name "Benjm13", Fassbender exchanged messages with a person using the screen name "Wi4Kink". Following several sexually oriented communications, Wi4Kink suggested that the two get a motel room together the following weekend. Benjm13 (Fassbender) then suggested meeting at the Burger King in Little Chute, which is where he told Wi4Kink he lived. Wi4Kink agreed, and they arranged a meeting. Fassbender determined through American Online that Brian Robins was Wi4Kink and set up surveillance at his Wauwatosa home. At the appointed time, the officers followed Robins to the Burger King in Little Chute and arrested him as he walked into the restaurant. He later confessed.

In the circuit court, Robins filed motions challenging the child enticement statute. He argued that he did not, in fact, have sexually explicit conversations with, or arrange to meet, a 13-year-old boy because Benjm13 did not exist. The circuit court denied his motion and he petitioned to bypass the Court of Appeals.

The issue before the Supreme Court is whether the child enticement statute is constitutional as it applies to the Internet, given that the statute does not require proof that the accused knew the chat-room buddy was underage. The statute reads as follows:

Wisconsin Statutes Section 948.07

Child Enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:

(1) Having sexual contact or sexual intercourse with the child in violation of Wis. Stats. 948.02 or 948.095.